

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

=====	:	
AUCTUS FUND, LLC,	:	
	:	
Plaintiff,	:	<u>Civil Action No. 1:20-CV-11336-ABA</u>
	:	
v.	:	
	:	
NUGENE INTERNATIONAL, INC.,	:	
	:	
Defendant.	:	
=====	:	

**PLAINTIFF AUCTUS FUND, LLC’S MOTION
FOR LEAVE TO FILE PROOF OF SERVICE
AS TO DEFENDANT NUGENE INTERNATIONAL, INC.**

The Plaintiff, Auctus Fund, LLC (“Plaintiff”), pursuant to the Federal Rules of Civil Procedure and the Local Rules, hereby respectfully moves this Honorable Court for leave to file its Proof of Service, in the form as attached as **Exhibit 1** to the Affidavit of Philip M. Giordano, Esq. (hereinafter the “Giordano Affidavit”), as to service of process upon the Defendant, NuGene International, Inc. (hereinafter the “Company” or “NUGN”), in the above-captioned litigation. In support hereof, the Plaintiff submits the Giordano Affidavit, with **Exhibit 1** thereto, and also relies upon its Statement in Response to November 2nd Order to Show Cause. The Plaintiff respectfully requests that this Motion be granted without the necessity of a hearing.

In support hereof, the Plaintiff, Auctus Fund, LLC, respectfully states that it served Defendant NUGN on October 14, 2020, which was the ninety-first (91st) day after the filing of the Complaint. Auctus submits that the Defendant was served only one (1) day beyond the time period permitted by the Federal Rules of Civil Procedure and the Local Rules, and such delay has since been cured. The Plaintiff respectfully states that the Company’s Answer or other responsive papers

were due on or before November 4, 2020, and it is undisputed that NUGN has failed to timely respond to the Complaint. Auctus further states that the delays arose from an oversight of its counsel, who relied upon a former short-term employee, and that a dismissal by this Court would result in a windfall to the Defendant. Finally, the Plaintiff respectfully submits that good cause exists for the Honorable Court to permit Auctus to continue to prosecute this action against Defendant NuGene International, Inc., and take such necessary and appropriate steps, including but not limited to the filing of a Rule 55(a) Request for Entry of Default, a Motion for Default Judgment, and take other actions, as may be required to bring the action to a Judgment.

WHEREFORE, the Plaintiff, Auctus Fund, LLC, hereby respectfully moves this Honorable Court for leave to file the Proof of Service, as attached to the Giordano Affidavit as **Exhibit 1**, in the above-captioned litigation. The Plaintiff respectfully request this Motion be granted without the necessity of a hearing.

Respectfully submitted,
PLAINTIFF, Auctus Fund, LLC,

By its Attorneys,

/s/ Philip M. Giordano
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Dated: November 9, 2020

CERTIFICATE OF SERVICE

I, Philip M. Giordano, do hereby certify that on the 9th day of November, 2020, I caused to be served a true and correct copy of Plaintiff Auctus Fund, LLC's Motion for Leave to File Proof of Service as to the Defendant NuGene International, Inc., as filed by and through the District Court's electronic filing/ECF system and that such true copy is available for downloading and viewing by all counsel of record.

Dated: November 9, 2020

/s/ Philip M. Giordano
Philip M. Giordano